

**Before the State of South Carolina
Department of Insurance**

In the Matter of:

Foundation Insurance Company
1061 521 Corporate Center,
Suite 140
Fort Mill, South Carolina 29715

**Order
Imposing Administrative Supervision
And Appointing Supervisor**

The South Carolina Department of Insurance brings this matter before the Director of Insurance upon review of the business affairs and operations of Foundation Insurance Company (Foundation).

It is the Department's opinion that the operation of Foundation is such as to render the continuation of its business hazardous to the public and its policyholders. The Department further believes Foundation has failed to comply with the insurance laws of this state.

FINDINGS OF FACT

1. Foundation is a South Carolina domestic insurance company. It is not a publicly traded company. Foundation initially received a license as a captive insurance company under Chapter 90 of Title 38 of the South Carolina Code of Laws on February 21, 2001. It converted and was licensed as a traditional insurer on August 13, 2003 and transacts business under Section 38-5-10 of the South Carolina Code with property, casualty, and marine authority.
2. Foundation's 2003 Annual Statement shows that it transacts business only in South Carolina. It wrote no direct business in South Carolina in 2003. Instead, it operated primarily as a reinsurer.
3. Section 38-9-10(A)(1) of the South Carolina Code requires Foundation to maintain capital of at least \$1,500,000 and surplus of not less than \$375,000. Section 38-9-10(C) if Foundation's minimum capital becomes impaired.
4. Foundation's 2003 Annual Statement shows the company's stated capital to be \$1,500,000 and its surplus to be <\$1,435,805>, for a total capital and surplus of \$64,195. That Statement also shows that Foundation suffered a loss from operations in 2003 in the amount of \$2,888,563.
5. On March 10, 2004, the Department, by certified mail, informed Foundation that it had until April 9, 2004 to provide the Department with evidence that it had brought its capital and surplus into compliance with Section 38-9-10(A)(1).

6. By letter dated March 25, 2004, Foundation acknowledged receipt of the Department's directive. Foundation informed the Department that it was not opposed to infusing additional capital into the company, but that it would take some time to do so. It requested an extension to July 9, 2004 to bring its capital and surplus into compliance with Section 38-9-10(A)(1). In a telephone call on April 1, 2004, the Department informed Foundation that should it fail to correct the impairment as directed by April 9, 2004, it would be recommended to the Director that regulatory action be instituted against Foundation. As of close of business on May 12, 2004, Foundation had not infused any additional funds to bring its capital and surplus into compliance with Section 38-9-10(A)(1).

7. Section 38-5-120 (A) of the South Carolina Code in pertinent part states:

The director or his designee shall revoke or suspend certificates of authority granted to an insurer and its officers and agents if he is of the opinion upon examination or other evidence that one or more of the following exist:

...

(1) The insurer is in an unsound condition.

...

(3) The insurer's condition renders its proceedings hazardous to the public or its policyholders. For the purpose of the application of this item, one or more of the following standards may be considered by the director or his designee in determining whether the continued operation of an insurer transacting insurance business in this State is hazardous to the public or its policyholders:

(a) adverse findings reported in financial condition and market conduct examination reports;

...

(f) whether the insurer's operating loss in the last twelve months or a shorter time, including, but not limited to, net capital gain or loss, change in nonadmitted assets and cash dividends paid to shareholders, is greater than fifty percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

...

(o) whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

8. On April 12, 2004, I suspended Foundation's certificate of authority to transact business in this State.
9. As of close of business on May 12, 2004, no additional capital has been infused into Foundation .
10. Section 38-26-40 of the South Carolina Code in pertinent part states, "An insurer may be subject to administrative supervision by the Department if upon examination or at another time it appears in the discretion of the Director or his designee that...(1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds."

CONCLUSIONS OF LAW

After a thorough review of the matter and given Foundation's current level of capital and surplus, I hereby conclude the following as a matter of law:

1. The South Carolina Department of Insurance has jurisdiction over Foundation and this matter.
2. By failing to make the capital infusion as directed by the Department, Foundation fails to meet the minimum capital and surplus requirements established in Section 38-9-10(A)(1) of the South Carolina Code of Laws.
3. Foundation is in a hazardous financial condition and its continued operation is hazardous to the public.
4. Section 38-26-50 provides that the proceedings, hearings, notices correspondence, reports, records and other information in the possession of the director, his designee or the Department of Insurance relating to the supervision of an insurer are confidential except as provided... Section 38-26-50 also provides that the director may make public certain information if the director determines it is in the best interest of the insurer, its insureds, its creditors, or the general public. Inasmuch as Foundation is a single state domestic insurer, without publicly traded stock, these proceeding shall be considered confidential until such other time as the director may deem disclosure appropriate.

ORDER

IT IS THEREFORE ORDERED that Foundation be placed under the Department's supervision pursuant to the Administrative Supervision of Insurers Act. S.C. Code Ann. Sections 38-26-10, *et seq.* Pursuant to that Act and S.C. Code Ann. Section 38-3-150, I hereby appoint Linda G. Haralson, the Department's Chief Financial Examiner, as Interim Supervisor of Foundation, vesting her with full authority to apply all applicable statutes and regulations.

IT IS FURTHER ORDERED that, during the period of supervision, Foundation must not do any of the following acts *without the prior approval* of the Supervisor or her appointed representative(s) for supervision:

1. Dispose of, convey, or encumber its assets or its business in force;
2. Withdraw its bank accounts;
3. Lend its funds;
4. Invest its funds;
5. Transfer its property;
6. Incur any debt, obligation, or liability;
7. Merge or consolidate with another company;
8. Accept and/or approve any applications for insurance;
9. Approve new premiums or renew policies;
10. Enter into a new reinsurance contract or treaty;
11. Engage in any advertisement or solicitation;
12. Terminate, surrender, forfeit, convert, or lapse an insurance policy, a certificate, or a contract, except for nonpayment of premiums due;
13. Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on an insurance policy, certificate, or contract;
14. Make a material change in management; and
15. Increase salaries or benefits of officers or directors or the preferential payment of bonuses, dividends, or other preferential payments.

IT IS FURTHER ORDERED, effective immediately, Foundation's writings shall be subject to the approval of the Supervisor in accordance with S.C. Code Ann. Section 38-26-60 (8), (9), and (11).

IT IS FURTHER ORDERED the Supervisor shall fix and determine all costs incident to service rendered by her or her appointed representative(s) pursuant to this Order. This amount is to be a charge against the assets and funds of Foundation to be paid as required by S.C. Code Ann. Section 38-13-70.

IT IS FURTHER ORDERED that Foundation will remain under the administrative supervision of this Department until: 1) it demonstrates to the Department's satisfaction

that the conditions which have made this action necessary have been abated; 2) it provides the Department a comprehensive reorganization plan demonstrating how the company can become more profitable and be a going concern; and 3) it infuses the capital necessary to meet and maintain the necessary capital and surplus requirements. In order for the Department to lift the administrative supervision, Foundation must satisfy the conditions outlined above and restore its capital and surplus to \$1,500,000 and \$1,500,000, respectively, and must maintain those amounts at all times thereafter.

IT IS FURTHER ORDERED that nothing contained within this Order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this Order should be construed to limit the ability of the Director to impose further action against Foundation, including placing them into conservation, rehabilitation, liquidation, or other delinquency proceedings, during the period of administrative supervision or, as the Director believes, in his sole discretion, circumstances warrant. See S.C. Code Ann. Section 38-26-80.

This Order is to be binding upon Foundation, its agents, servants, officers, directors, employees, attorneys, and on all those persons in active concert or participation with them or who will receive actual or constructive notice of this Order by personal service or otherwise.

This Order becomes effective on the date my signature below.

A handwritten signature in black ink, appearing to read 'Ernst N. Csiszar', written in a cursive style.

Ernst N. Csiszar
Director

May 17, 2004
Columbia, South Carolina